

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 481 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AMRISH SHASHIKANT JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR MTM HAKIM for Petitioners

MR SP DAVE, APP, for Respondent No. 1

MR NAGIN N GANDHI for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/07/1999

ORAL JUDGEMENT

1. Mr. Hakim is not present when the matter is called out. Mr. S.P. Dave and Mr. Gandhi are present. Both the parties are also present. On being questioned, it appears that the petitioner is not in a mood to negotiate for settlement.

2. Rule. Mr. Dave waives service on behalf of

respondent No.1-State and Mr. Gandhi waives service on behalf of respondent No.2.

3. On earlier occasion, Mr. Hakim had argued that he does not press for quashing of the complaint, but urges that because the complaint is filed in a Court within whose jurisdiction even according to the complaint the incident has not occurred, the complaint may be ordered to be returned to the complainant for being produced before the Magistrate who will have jurisdiction to proceed with the complaint. In support of his say, he has placed reliance on decisions of this Court rendered in Upendrasinh Achalsinh Rajput & Ors v. State of Gujarat, 38(1) GLR 504 and Girdharlal Tenumal Motwani v. State of Gujarat, 1997(2) 432.

4. Mr. Gandhi tried to oppose this petition on the ground that it would be a question of evidence as to where the incident occurred.

5. Having considered rival side contentions, it appears that it is not possible to accept the contention raised by Mr. Gandhi because even taking the complaint at its face value, the incidents have occurred at Baroda. The complaint is lodged at Bhavnagar. Under these circumstances, keeping in light the decision of this High Court in the case of Upendrasinh Achalsinh Rajput as also the decision in the case of Girdharlal Tenumal Motwani (Supra) and keeping the provisions of law in mind, the complaint cannot be permitted to be proceeded with at Bhavnagar. The learned Judicial Magistrate, First Class, Bhavnagar 1st Court is, therefore, directed to return the complaint, namely, M. Case No.35 of 1997 to the complainant-respondent No.2 herein for producing the same before the learned Chief Judicial Magistrate, at Baroda. Petition is accordingly disposed of. Rule is made absolute to the above extent.

[A.L. DAVE, J.]

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